IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.1067 OF 2002

Sheh Kutir Co-operative Housing Society Ltd. ... Petitioner.

Vs.

Smt.Winnie Fernandes & Ors. ...Respondents.

....

Ms. Lakshmi Murali for the Petitioner.
Mr. R. B. Parab for Respondent No.1.

.....

CORAM : DR.D.Y.CHANDRACHUD, J.

January 13, 2005.

P.C.:

The First Respondent is a member of the Petitioner which is a Co-operative Housing Society registered under the Maharashtra Co-operative Societies Act, 1960. The Petitioner is an occupant of Flat A/13. The First Respondent, it would appear, had paid maintenance charges in the amount of Rs.5,000/- on 14th March 1991. After the aforesaid payment was made, it is an admitted position that for a period of 10 years, the First Respondent did not make any payment at all. The Society moved an application under Section 101 of the Maharashtra Co-

operative Societies Act, 1960, which culminated in an order dated 31st March 1998 of the Deputy Registrar of Co-operative Societies. The First Respondent carried the matter in revision and by the impugned order dated 16th March 1999, the recovery certificate and the order passed by the Deputy Registrar came to be set aside.

2. While admitting this petition on 15th April 2002, the Learned Single Judge noted that the First Respondent is a defaulter for a period of 10 years and had not paid any amount towards the maintenance bills of the Society. In these circumstances, interim relief was granted in terms of prayer clause (b), directing the First Respondent to deposit the arrears of outstandings with the Society and to continue to pay regular outgoings on account of maintenance bills.

3. Now it is an admitted fact that on 18th December 2001, a cheque in the amount of Rs.20,523.50 was handed over by the Petitioner to the society towards the outstandings payable for the

period between January 1991 and December 2001. Even this amount is not adequate enough to cover the dues for the period between July 1991 and May 1997 which forms the subject matter of the recovery certificate. The Petitioner has paid further amounts of Rs.4,331.36 on 11th July 2000 towards the outstandings between January and July 2002 and Rs.10,701.16 for the outstandings for the period August 2002 to December 2003. Copies of the letters of the Petitioner dated 7th July 2004 and 14th July 2004 in respect of this have been produced before the Court by the Learned Counsel appearing on behalf of the First Respondent.

4. The Divisional Joint Registrar was impressed by the submission that the Society had not supported its bills with reference to a resolution of the General Body in regard to the increase in monthly maintenance charges from Rs.150/- to Rs.250/- per month. Similarly, he was of the view that the levy of painting charges of Rs.50/- per month was not supported by any resolution. Similar was held to be the position in regard to the

charging of interest at the rate of 21% p.a.

5. Learned Counsel appearing on behalf of the Petitioner has relied upon a resolution passed at the Annual General Meeting of the Society on 27th October 2001 by which painting charges were reduced to Rs.100/- from Rs.150/- with effect from January 1991. In so far as maintenance charges are concerned, there was a resolution at the A. G. M. dated 14th August 1995 to charge maintenance at the rate of 20 paise per square feet. The resolution is not entirely free from difficulty since it then proceeded to state that maintenance would of Rs.250/- for flats on the ground floor and Rs.260/- for flats on the higher floors. Be that as it may, the statement which has been appended at Exh.A to the Petition would show that maintenance charges were initially charged at the rate of Rs.100/- per month between July 1991 and December 1993, Rs.150/- per month between January 1994 and October 1996 and at the rate of Rs.250/- per month from November 1996 to May 1997. The First Respondent does not dispute the liability to pay maintenance charges at the rate of

Rs.100/- and Rs.150/- and the dispute would appear only in respect of maintenance charges quantified at Rs.250/- per month. Even assuming, as the First Respondent contends, that there is no resolution authorising the charging of an amount of Rs.250/- per month, this would only relate to the period between November 1996 and May 1997, namely, of seven months. The difference on this account of Rs.100/- per month would make a total amount of only Rs.700/-, exclusive of interest levied thereon. In so far as the question of interest is concerned, Counsel for the Petitioner has relied upon a resolution of the Society dated 3rd October 1996 at a Special AGM and the provisions of Model Bye-law 72 authorising the charging of interest at the rate of 21% per annum.

6. In my view, the entire approach of the Divisional Joint Registrar appears to have been flawed. Co-operative Housing Societies cannot be effective in achieving the purpose for which they exist if members default in paying maintenance bills. The First Respondent stated before the Divisional Joint Registrar that she was willing to pay all the arrears without interest, provided certain

repair work was carried out in the flat immediately above her flat in which she alleged that there was a leakage. In my view, it would be necessary that the Deputy Registrar of Co-operative Societies applies his mind afresh and makes a correct computation of the dues that are payable by the First Respondent. The order of the Deputy Registrar dated 31st March 1998 was not a speaking order and no detailed consideration appears to have been given to the claim of the Society and to the defence, if any, of the First Respondent. The Divisional Joint Registrar has similarly not considered the effect of the Resolutions which the Society claimed to have been lawfully passed.

7. To facilitate a fresh determination, the impugned order of the Divisional Joint Registrar dated 16th March 1999 is quashed and set aside. The First Respondent is directed to deposit with the Deputy Registrar an amount of Rs.15,000/- on or before 22nd February 2005. The Petitioner would be at liberty to withdraw the aforesaid amount subject to the final result of the proceedings before the Deputy Registrar. The Deputy Registrar shall verify the

claim of the Society and shall pass a fresh order after giving to the Society and the First Respondent an opportunity of being heard. The parties shall appear before the Deputy Registrar on 25th February 2005 at 11 a.m. The Deputy Registrar shall pass a fresh order after hearing the parties on or before 31st March 2005. The amount which has been paid in the meantime shall abide by the final decision of the Deputy Registrar and in the event any amount is found due and refundable by the Society to the First Respondent, that shall be adjusted against future payments of maintenance bills that may be due and payable to the Society.

8. The Writ Petition is accordingly disposed of. No costs.

.....